

MEMORANDUM

April 12, 1994

TO: [Name1 withheld], Councilmember
Montgomery County Council

FROM: Jay L. Cohen, Chair
Montgomery County Ethics Commission

RE: Request for Waiver

The Ethics Commission has reviewed your request for a waiver from certain requirements of the ethics law. Based on your request, the Ethics Commission understands the facts as follows.

You have asked for a waiver to allow you to submit your 1993 Financial Disclosure Statement without listing any of the wedding gifts you received when you married in June 1993. In the Commission's memorandum to you dated July 14, 1993, the various provisions of the reporting requirements in the Ethics Law concerning the receipt of gifts and the reporting of gifts in a Financial Disclosure Statement were reviewed in detail. The Commission also invited you to submit any additional information that you felt would assist the Commission in reviewing your waiver request. Having received no additional material, the Commission has reviewed the original information provided by you and has considered the pertinent sections of the Ethics Law.

Based on this review, the Ethics Commission finds that it must deny your request for a waiver to submit your Financial Disclosure Statement without listing any of your wedding gifts. This decision is based on the fact that the disclosure of the gifts you have received is mandated by law, and that this Commission has no authority to release you from that legal obligation.

Section 19A-17(a)(1) of the Montgomery County Code provides that members of the County Council "must" file Financial Disclosure Statements. In addition, §19A-19 provides precise descriptions of the "information" which "must" be contained in the disclosure statements, including detailed rules identifying which gifts must be reported and the types of information which must be reported. See §19A-19(d) of the Montgomery County Code.

Although §19A-6(a)(9) allows the Commission to interpret the Ethics Law, no interpretation of §19A-19(d) could permit you to omit these wedding gifts from your

Financial Disclosure Statement. Instead, it is clear that the reporting of these gifts is an express affirmative obligation imposed upon you by the Montgomery County Code. Moreover, while §19A-8 authorizes the Ethics Commission to grant waivers from various “prohibitions” contained in the Montgomery County Code, no provision appears in the Ethics Law that gives the Commission the power to waive specific affirmative obligations expressly imposed by the Code. Rather, the only power given to the Commission in this instance is the power to interpret the law and, upon receipt of a written request, to grant an extension of time for filing your financial disclosure statement. See § 19A-6(a) of the Montgomery County Code.

Based on the foregoing discussion, it is the decision of the Ethics Commission that your request for a waiver must be denied.

In completing the Financial Disclosure Statement the Commission would like to reiterate its previous guidance that gifts from relatives need not be reported, and that §19A-19(d)(2) permits the nondisclosure of certain gifts with a value of less than \$50. Moreover, the gifts that must be reported require only the following information:

- (a) the nature of each gift;
- (b) the value of each gift by category:
 - (i) \$50 or under;
 - (ii) \$51 to \$100;
 - (iii) \$101 to \$500;
 - (iv) above \$500; and
- (c) the person who gave the gift or directed, either directly or indirectly, that the gift be given.

§19A-19(d)(1) of the Montgomery County Code 1984, as amended. The Commission understands that the value of a particular gift may not be equal to the cost of the purchase and, therefore, does not anticipate that specific inquiries need to be made of your guests. Rather, the value typically is the fair market value or resale value of the item.

This waiver was denied by the Commission at its meeting on March 29, 1994. On April 6, 1994, Ethics Commission staff orally informed you of the denial of this waiver. If you believe you need additional time to complete your Financial Disclosure Statement, please address a written request to the Commission, pursuant to §19A-6(a) of the Montgomery County Code.

If you have further questions, please do not hesitate to contact the Commission.

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cc: Barbara McNally, Administrative Specialist, Ethics Commission